

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

DOCKET#  
U.S. DISTRICT COURT  
WEST DIST. OF WISCONSIN

JUL - 6 2009

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY HENDRIX,

Defendant.

ORDER

06-cr-54-bbc

08-cv-274-bbc

On June 10, 2008, I denied defendant's motion for reduction of his sentence under 28 U.S.C. § 2255, finding that there was no merit to his claims that he was denied effective assistance of counsel. Judgment denying his motion was entered on June 11, 2008. On July 17, 2008, I denied defendant's motion to alter or amend judgment. On July 23, 2008, defendant filed a notice of appeal and requested a certificate of appealability. I denied his request for a certificate of appealability on July 29, 2008. On April 20, 2009, the Court of Appeals for the Seventh Circuit denied defendant's request for a certificate of appealability. On May 21, 2009, I denied defendant's motion for relief from the June 11, 2008 judgment.

Now defendant has filed a notice of appeal from the May 21, 2009 order. Because

Copy of this document has been  
provided to  
Hon. Judge John C. Shabaz  
this 16 day of July, 2009  
by M. Hardin, Secretary to  
Judge John C. Shabaz

defendant has not paid the \$455 filing fee, it is necessary to decide whether he is entitled to proceed on appeal in forma pauperis.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had court-appointed counsel during the criminal proceedings against him. I denied his motion under 28 U.S.C. § 2255 motion and his first request for a certificate of appealability. The court of appeals also denied his request for a certificate of appealability. Therefore, I will certify that his appeal is not taken in good faith and will deny him leave to proceed on appeal in forma pauperis.

Moreover, if defendant is requesting a certificate of appealability, that request is denied because plaintiff has not shown a denial of a constitutional right.

#### ORDER

IT IS ORDERED that defendant’s requests to proceed in forma pauperis on appeal

and for a certificate of appealability, dkt. # 15, are DENIED.

Entered this 6<sup>th</sup> day of July, 2009.

BY THE COURT:

*Barbara B. Crabb*

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BARBARA B. CRABB  
District Judge